

A commentary by
the Workers' Party of Turkey and the Communist Party of Turkey
on

The Trial of Nihat Sargin and Haydar Kutlu
General Secretaries of the WPT and the CPT



DEMOCRACY OR DEMAGOGY

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Democracy Or Demagogy?



In Ankara a political trial is about to begin. The prosecutor of the state security court has already stated that "It is the trial of the century". Indeed, we have before us a unique trial, unprecedented in legal history.

The defendants are, besides Kutlu and Sargin who, between them, are facing over 1,000 years in prison, two of their defence lawyers and twelve other persons. However, the issue goes well beyond the fate of 16 people. This trial is a challenge for all those for whom the concept of "human rights" is not only an empty phrase.

The concept of "human rights" is closely linked with the implementation of democracy. The Magna Carta, the Declaration of Human and Civil Rights of the French Revolution and, finally, the Universal Declaration of Human Rights of 1948 constitute milestones on a road which leads from an absolute dictatorship to a democratic republic and to the basis of people's sovereignty. Turkey recognised this basic principle in 1923 when the Turkish state was declared a republic. The actual realisation of democracy, however, remained until today a task the fulfilment of which requires great personal sacrifices.

The Prime Minister Ozal, who came to power three years after the military coup of 12th September 1980, claims that democracy has been restored in Turkey and human rights are being respected.

In November 1987 two politicians who had been living in exile in Europe since the 1980 military coup, namely Dr. Nihat Sargin and Haydar Kutlu, the General Secretaries of the Workers' Party of Turkey and the Communist Party of Turkey, respectively, acknowledged Ozal's statements and returned to Turkey in order to claim their right to political activity in line with their political convictions which is a normal practice in all European democracies.

These two politicians were taken into custody at Ankara airport and interrogated and tortured for 19 days at the end of which they were arrested. This practice was unlawful and even in violation of the Constitution which had been imposed by the military in 1982, because Article 19 of this Constitution states that detainees must be brought before a court within maximum 15 days.

The detention of Kutlu and Sargin has prompted discussions beyond and above the framework of political parties both in Turkey and abroad. Shortly after their detention, the European Parliament passed a resolution on 19th November 1987, demanding the two leaders' immediate release and the recognition of their rights to free political activity. In Turkey, the two social democratic parties, SHP and DSP reprimanded their programmes in which they demanded free political activity for all non-violent political convictions. In Europe, a great number of prominent personalities called for their release.

Oltan Sungurlu, the Minister of Justice of the new Ozal government declared in a press statement: "Presently, there are no preparations for a general amnesty, for abolishing the death penalty or for repealing Articles 141, 142 and 163 of the Turkish Penal Code. We may or we may not take up these issues in the future!"

Reading between the lines, this declaration of the Minister indicates that if pressure can be built and sustained upon the government by the democratic public opinion, both in Turkey and abroad, it could be possible to get the government to start the preparations regarding the issues mentioned in Sungurlu's statement without delay. It all depends on the efforts of defenders of human rights.

Are Torture Allegations Groundless?

Turkish authorities continuously deny torture. Proven and documented torture cases are dismissed as "individual incidents" and even though there are promises that they will be looked into, nothing ever comes out of it.

It has been nearly 8 years since the military coup and four years since the formation of the first Ozal government. Yet, systematic torture is still an integral part of police interrogations. This is also confirmed by prestigious international organisations such as Amnesty International and Helsinki Watch Group. Even the Reagan administration, who is among the staunchest defenders of the present government in Ankara, admitted in its most recent report on human rights (published in February 1988) that "there is systematic torture in Turkey". It is furthermore stated that the heaviest torture takes place immediately following detention and continues until the detainee is brought to court.

In order one can discuss whether or not allegations of torture are justified, it is necessary to agree on the definition of torture. The Convention on torture which was accepted by the UN General Council on 10th December 1984 defines in Article 1, Paragraph 1, what is to be understood by torture. According to this, all actions "through which physical or psychological/ mental damage is inflicted on a person in order to extract a confession or a statement from him/ her or from a third person, to punish him/ her or a third person for an actually or allegedly committed offence, to intimidate or persecute him/ her or a third person." Turkey signed this Convention at the beginning of 1988, but has not yet ratified it.

Let us now look at a recent decision of the Military Court No. 1 in Ankara and see how it fits into the wording and spirit of the above-mentioned Convention. The defendants were Ali Kaymakçı and Mustafa Özcihan, two officers of the political police, who were charged with having tortured Ayhan Sarıhan during his interrogation. The presiding judge Ali Karahan acquitted the two defendants despite witnesses' evidence, "because", he said "ordinary beatings cannot be considered torture. For any action to be called torture, the person concerned should lose his/her ability to work for at least 10 to 15 days." (Cumhuriyet, 30th December 1987).

Recently, President Evren presented his own version of the definition of torture. He told the peasants who were complaining about their living conditions which they described as a torture: "do you know what torture is? Torture is to bind you and gag you, and then apply electricity to your body!" Sometimes, despite all efforts, the authorities cannot cover up a torture case. Especially if the victim has lost his/her life under torture. But, even in such cases, the torturers can be reassured that every effort will be spent to get them released unpunished. The case of the notorious officer Mustafa Haskırış from political police will highlight this.

Numerous political prisoners have identified Mustafa Haskırış as their torturer. However, he was never punished. Finally, it was proved that this man had tortured to death Z. Abidin Ceylan, and he was sentenced to fourteen years imprisonment, this being one of the longest prison terms ever passed on a torturer. One would have thought, at last justice has been restored. But, far from it! Because the court had decided one week before the final verdict was to be reached, to release the torturer Mustafa Haskırış on bail! He was released from the prison and returned to his job as a police officer. He applied for a passport and received it without delay. And that was how this notorious torturer officially left the country only a few days before his verdict was read. Both Haydar Kutlu and Dr. Nihat Sargın have repeatedly expressed that they have been subjected to torture. The methods used were hanging by the arms, application of electric-shock and torture on their genitals. They were also injected with unknown chemical substances. Amnesty International called for "urgent action", a great many intellectuals demanded an enquiry into these allegations. However, an enquiry that had been initiated by the office of the public prosecutor was soon discontinued. Just as in all other similar cases, the authorities reject these allegations. There are, however, questions which still remain unanswered and require a satisfactory answer immediately.

1. Why were the two politicians completely isolated from the outside world for 19 days in violation of the Constitution?
2. Why were the Members of the European Parliament not allowed to talk to these two detainees in person and only allowed to see them briefly through the grille of the door?
3. Why did the Ozal government refrain from signing the European Convention for the Abolition of Torture while Kutlu and Sargın were still being interrogated?
4. How come the police were allowed to conduct the interrogation for three weeks without the detainees' access to their lawyers? Isn't this kind of practice reminiscent of the fascist interrogation methods?
5. How can the court accept these statements extracted under pressure and later rejected by the two detainees?

The very fact that the Turkish government is not in a position to satisfactorily answer these questions is self-explanatory. They cannot refute Kutlu and Sargin's allegations of torture! In the meantime, medical examination has confirmed torture. On 25th February 1988 Dr. N. Sargin was examined in Numune hospital in Ankara for his pains in the back and in his shoulders and it was shown that his shoulders had been damaged due to excessive pressure (by hanging from his arms), even though the examination was carried out three months after the actual torture.

The Indictment is Based on Crude Anti-Communism

The indictment of the prosecutor was presented on 14th March 1988. In no way does it contain an analysis of the Draft Programme of the United Communist Party of Turkey (UCPT) or an attempt to prove its unlawfulness. The prosecutor clearly wants to avoid any arguments regarding the UCPT. As the following quotation from the indictment shows, the prosecutor has to admit that the Draft Programme of the UCPT has, from the historical point of view, further developed the ideas of the Communist Party of Turkey and the Workers' Party of Turkey: "The ideas, common to the programmes of the illegal CPT and WPT are now seen in the Programme of the UCPT which the defendants Nabi Yağcı (Haydar Kutlu) and A. Nihat Sargin were planning to form abroad". (p. 47, Turkish original text). It is, however, left at this. The prosecutor did not dare to make an assessment of the Draft Programme of the UCPT from the point of view of the current laws. Instead, he goes from his own views about communism. He postulates from the beginning that, first of all, all Communist Parties are identical. Secondly, that all Communist Parties are striving to establish the same "Marxist-Leninist regime" and, thirdly, that this regime is incompatible with a democratic order, in general, and the Turkish Constitution in particular.

The concept of Marxism, as it is presented in the Draft Programme of the UCPT, is deliberately overlooked:

"The party stresses that in the development of the Marxist theory continuity and renewal are intertwined and Marxism is open to everything positive and valuable in contemporary human thought". (UCPT Draft Programme, part 4).

In order to be able to demand the sentence as he has done, the prosecutor put his own prejudices about communism into the mouths of the defendants. In other words, the Draft Programme of UCPT has no role in the trial. It is sufficient that Kutlu and Sargin call themselves communists and follow the ideals of Marx, Engels and Lenin. The prosecution does not even bother to prove the "unlawfulness" of this actual party nor does it attempt to point out one by one the offences of these two actual people. It is enough to present them as communists, which, after all, is not an "extraordinary trick" because Sargin and Kutlu have from the beginning presented themselves as leading communist politicians.

The primitive anti-communism which emerges is rather remarkable. Here we quote a few sentences which, according to the prosecution, should characterise communism:

"The basic principle of communism is: Death to those who are not with us. There is no middle way!"

"In their (communists') eyes, every talented, enlightened and enterprising person is a fascist and must die!"

Among the reasons for the proscription of the communist party it is stated: "It is assumed that the Turkish people will not accept this illegal party programme." One can only say: No comment!

The very fact that the prosecution is not prepared to go into the ideas and political statements of the UCPT shows the weakness of their position. They simply cannot prove the alleged anti-democratic nature of the UCPT. This is not surprising at all. How can they prove such an allegation if the draft programme of the UCPT states:

"The Programme for Peace and Democratic Renewal is a programme to immediately, i.e. within the framework of capitalism, bring the first possible internal and external economic and political solutions to the deep-rooted problems of the working people".

"The Programme for Peace and Democratic Renewal is a programme to secure a democratic regime which is based on active participation of the masses in the political life of the country and in which the democratically elected parliament will be the highest organ in the political system. It is a programme to bring a just, lasting and peaceful solution to the Kurdish national question. The achievement of democracy and solving the social problems of the working people are the internal political preconditions of economic development". (UCPT Draft Programme, part 7).

On the basis of these statements in the Draft Programme, how can anyone allege and uphold the accusation that the UCPT sets out to establish a dictatorship?

There is another "offence" which both Kutlu and Sargin are charged with in various places of the indictment, and this is "weakening the national feelings"! Kutlu and Sargin must be punished because they accept the existence of the Kurdish people and demand respect for and recognition of their rights. To protest against the oppression of the Kurdish citizens of our country, which, after all, is the duty of all democrats, is declared a criminal act requiring punishment. The UCPT's proposal for a democratic and peaceful solution to the Kurdish question can not even be discussed. As history has shown, the denial of the Kurdish question and attempts to solve it by military means can only lead to deepen the existing problems.

The indictment presents yet another proof for the fact that Kutlu and Sargin are for the peaceful realization of their political aims. Nowhere in the indictment are they accused of terrorist activities, nor are they accused of having defended and/or used violence. On the contrary: Even the prosecutor of the State Security Court has to admit in the indictment that armed actions were not among the activities of the Communist Party of Turkey. Literally, it is expressed as follows: "Depending on the time and the conditions, the Communist Party used different tactics for the implementation of its strategy. In general, these were propaganda work which excluded armed actions, mass campaigns and activities to form a united front." (From the Indictment, original text, p.62)

Can We Expect a Flawless Legal Procedure?

The case of Kutlu and Sargin will be heard at the State Security Court in Ankara. The State Security Courts are specialized courts. They were established way back in the 1970s, but later they were declared unconstitutional by the Constitutional Court and were then closed down.

Following the military coup in 1980, the ruling generals have re-established these special courts under the new 1982 Constitution they have imposed. As is also seen in the initial negative verdict of the Constitutional Court, there are still some doubts regarding the independence of State Security Courts.

Two issues are especially pointed out: Firstly, since these courts have been set up by the military, the judges were also appointed at the discretion of the military rulers, which is not possible in an ordinary court. Secondly, there are normally three judges in a State Security Court. According to law, one of them is a military officer who has studied law and has been trained to be a judge. In his legal decisions, he is not bound by the directives of his military superiors, but there certainly are numerous ways and means to influence the decisions of this military judge. The very fact that his professional career is closely linked with the military would be a sufficient indication of this. On the other hand, there are also some military judges who would not give in to the pressures from above; but they often end up in having to resign from their posts.

Another important issue concerns the right to defence. There are already, even before the start of the trial, alarming developments regarding this, because, together with Kutlu and Sargin, charges have also been brought against two of their defence lawyers, Atilla Coskun and Rasim Oz. They were detained and then released as a result of international pressure in December last year. Atilla Coskun is accused of "being a member of the illegal Communist Party of Turkey" and Rasim Oz is charged with "praising a criminal offence" as he expressed his admiration for the two leaders' dedication to democracy. According to a new law, again prepared by the military, these two lawyers can no longer act as defence lawyers of the two General Secretaries, because they are among the defendants in the same trial.

This shows that the court can arbitrarily exclude any number of defence lawyers from the trial. The defence lawyers risk the possibility that all of a sudden they might find themselves in the dock. This is a constant threat to the defence, and a very real one, too, as shown in the case of Coskun and Oz.

"Everything Is Being Done According To Laws!"

On 19th November 1987, i.e. very shortly after their detention, the European Parliament as well as the Amnesty International demanded the immediate release of Kutlu and Sargin. The standard reply from the authorities in Ankara to such demands is: "Everything is being done according to the Turkish laws!" So, the Turkish laws state that the Communists should be arrested. What kind of an argument is this?

It is clearly seen that the Turkish laws treat Communists in the same way they treat common criminals. But are such laws acceptable as the basis of justice? Ever since the humanity has experienced the horrors of fascism, the international community rejects such approaches to justice and basic rights. Was it not as a result of the fascist terror that the United Nations Organisation introduced the Universal Declaration of Human Rights on 10th December 1948 -to which Turkey is also a signatory?

Turkey also accepts, both through its signing of the European Convention of Human Rights and through the repeated statements of Ozal Government, that Turkish laws cannot be considered adequate in judging the lawfulness of any of the practices of the state. It is more appropriate to ascertain whether or not a certain law is in accordance with human rights. There are many European specialists in law who consider not only many Turkish laws but also related practices as incompatible with human rights.

The International Conference of the "Friends of Turkey", convened in Paris, on 27-29 November 1987, passed the following resolution moved by the Danish Professor of Law, Eric Siesby:

"Many Articles of the Turkish Penal Code are in violation of the principles of freedoms of conscience, religion, thought and expression, and the right to assemble and to organise as they are stated in Articles 9, 10 and 11 of the European Convention and Articles 18, 19 and 20 of the Universal Declaration of Human Rights. This goes especially for Articles 140, 141, 142, 143, 158, 159 and 163 of the Turkish Penal Code. These Articles must be changed or abolished altogether."

In contrast to numerous other communists on trial in recent years, Kutlu and Sargin do not conceal the fact that they have dedicated themselves to Marxist ideology and its propagation. They returned to Turkey in their capacities as the General Secretaries of the two banned parties and presented themselves to the authorities and to the public as such.

The History of the Proscription of the Communist Movement



At a press conference in Houston, (USA), President Ozal asserted that Articles 141, 142 and 163 of the Turkish Penal Code had been, since the foundation of the Republic, the "main pillars of the Turkish state".

In fact, until Articles 141 and 142 were inserted into the Turkish Penal Code on 23rd June 1936, there were no laws placing communist propaganda or communist organisations under the threat of punishment. Before then measures had been taken to persecute the left, but these were through special laws, such as the Law for the Re-establishment of Peace, or through openly bending the rules.

Articles 141 and 142 were taken over by the Turkish Penal Code from that of the Italian fascist code of Mussolini of 1930. These were Articles 270 and 272 of the notorious Rocco-Law. They are based on a legal concept under which individuals can have no legal rights nor views which are at odds with the interests of the state. The provisions give the state every means with which to repress any opposition. In this way the law became an instrument of state power.

Briefly, Article 141 bans organisations which "aim to impose the rule of one social class over another or to remove one social class or to disturb the existing economic and social system of the country".

After their introduction in 1936, Articles 141 and 142 were tightened up further in Turkey in 1938, 1946, 1949, 1951 and 1983. The changes were such that they outdid even Italian fascism. In 1951 the conditions of violent subversion was so defined that even organisations which proposed non-violent change were affected by the proscription. Another, more serious, change was in the sentences which could be imposed. In Italy the strictest sentences under these Articles had been 5 to 12 years imprisonment, but in Turkey the death penalty was introduced.

Thus in Turkey, a member of the European Parliament and of NATO, the leader of an opposition group favouring non-violent changes faces the threat of execution.

There is an additional aspect of the Turkish Articles 141, a characteristic which makes it a legal curiosity. For it is a fact that this Articles creates a punishable offence which must shock any legally informed person. It makes punishable not only the formation of an organisation, not only the attempt to form an organisation, but the first steps towards the attempt to form an organisation. Indeed, the latter is punished as strictly as having already formed the organisation.

Thus, in practice, someone can be punished even when there is no proof of the attempt. It takes little imagination to understand the power the authorities have in such circumstances.

A further important characteristic of Articles 141 and 142 is their ambiguity. Concepts are used whose interpretation can change with the political climate.

What is meant by "to impose the rule of one social class over another"? Does that mean a dictatorship, or does it extend to democratic rule based on a majority vote? What is meant by "fundamental economic and social rules"? Are changes punishable even when they occur through democratic majorities?

The ambiguity is intentional. It allows legal judgements to declare punishable acts that previously were not so. This method was used after the national strike of 1980 to declare organisations like the Turkish Peace Association, the Turkish Teachers' Union or the Workers' and Peasants' Party of Turkey which had operated quite legally before the coup, subversive organisations and consequently to prosecute their leaders and members.

Such a situation has also been identified by Professor Siesby. He writes of Articles 141 and 142: "In 50 years this regulation has been used extensively to repress left-wing political activity. During the liberal period, from the Constitution of 1961 until 12th June 1980, such activities were only seen as punishable when they were violent or called for violence or used other illegal methods."

After the military coup of September 1980 these Articles were interpreted broadly. As a result of the retroactive use of this new interpretation, many organisations founded in the liberal period whose activity ended with the coup, were condemned under Articles 141 and 142, although the operation of these peaceful organisations was not punishable at the time of their formation".

Persecution of Ideas Without Parallel in Europe

Articles 141 and 142 are a clear refutation of the official Turkish claims that Turkey is "a part of the Western world". For these Articles serve to suppress political convictions and organising the propagation of ideas.

Unlike Europe, even thoughts and opinions are viewed as crimes in Turkey. To think is a punishable offence. The Turkish lawyer Dr. Bulent Tanor writes: "Included under these Articles is punishment for uttering or diffusing an outlook, an ideology, a doctrine or an idea."

Is there an equivalent situation elsewhere in Europe? Bulent Tanor, who has studied this aspect of the law in the USA, Great Britain, France, West Germany, Italy, Switzerland and Belgium, says that these countries have no laws which make punishable the expression or propagation of ideas and opinions. Calls to violence or agitation which are akin to legal offences are forbidden. There are no punishable thoughts or opinions in European legal systems, not even the concept of punishable political ideas, including calls to violence or to the violent denial of democracy.

As the Turkish Penal Code forbids actions aimed at the violent overthrow of the Constitution in Articles 146, 168, 169 and 171 and forbids the glorification of such deeds in Article 172, it is irrefutable that Articles 141 and 142 aim at the persecution of ideas and the suppression of a powerless opposition.

Prof. Dr. Cetin Ozek who adopts this position in his book, "Articles 141 and 142", writes "When there is no question of violence these Articles mean that left organisations who wish to come to power by democratic means and establish an order based on their ideas, are forbidden. In this way, the ruling regime makes opposition opinions offences. Thus the organisation of divergent political ideas and even the attempt to do so using democratic means to come to power can be punished. In the West, even the seizure of power by Marxist Socialism by democratic means is allowed."

Is There Anything Similar In The West?

It is an anachronism that Articles 141 and 142 remain in force and are used not only against communist movements but also against scientists, artists and anyone who falls foul of the regime. This is happening even though the transition to democracy is supposed to be complete.

Occasionally, the Turkish authorities, who cannot escape this anachronism, attempt to disguise their totalitarian views by citing internationally recognised and legitimate limitations of rights and freedoms. They attempt to refer to practices in some European countries.

For instance, they say that such practices still exist in the Italian Penal Code. However, they do not mention that after the fall of Mussolini the use of Articles 270 and 272 against social opposition ended and pluralism was firmly established.

The advocate of Articles 141 and 142 also point to the Federal Republic of Germany and maintain that the proscription of the Communist Party for a certain time is compatible with human rights. The example fails on two points:

Firstly, the KPD was not banned by law but by a court decision under which it is defined as contradicting the Constitution. The proscription does not apply to communist parties in general but to a particular communist party, the KPD. Thus it was possible later to remove the ban without changing the law, and to re-establish the Communist Party, the D.K.P.

Secondly, the opinion of the Federal Court clearly stated that Marxism-Leninism as a doctrine was not a matter for legal proceedings. It said: "Belief in a scientific teaching is not the basis of reproach against the KPD. These proceedings are not about declaring the theory of Marxism-Leninism as a uniform science against the

Constitution ... In so far as we are dealing with a science in the sense of Article 5, Section 3 of the Constitution, this system of knowledge is as such quite free: It can be taught, propagated, developed and even discussed and fought for. It is not the duty of these proceedings to pass a legal judgement on the scientific truth of Marxism-Leninism."

In Spain, Portugal and Greece, after the end of fascist dictatorships, changes in the Penal Code and legal practice were such that the communist parties had a constitutional right to exist.

These examples show that an essential premise for the realisation of a pluralist democracy is the granting of the right to free organisation and political activity to all political currents and opinions.

What Do The West European Lawyers Say About This Question?

The Danish Professor Eric Siesby, in his account of the legal situation in Turkey in which a large number of intellectuals, authors, journalists, artists, publishers, medical doctors, lawyers, trade unionists and politicians find themselves, the Danish professor Eric Siesby writes the following: "The activities for which these persons have been convicted or indicted are not acts of violence or any other ordinary crime as understood in West European countries, but expressions of political opinions or religious beliefs or the forming of organisations working for such opinions or religious beliefs. The incrimination of these activities violates Article 19 of the International Declaration of Human Rights and Article 10 of the European Convention of Human Rights and Freedoms."

The social-democratic Swedish Member of Parliament, Hans Goren Franck, writes in relation to the Articles 141, 142 and 163 of the Turkish Penal Code: "The above mentioned articles are used under the present legislation specifically to punish non-violent opposition in Turkey. Many courts' decisions and rulings by superior courts reveal that the usage of these Articles violates the right to freedom of expression, association and religion and that their application is therefore in contravention of Articles 9, 10 and 11 of the European Convention of Human Rights to which Turkey is a signatory".

If Turkey should become a country which pursues its international obligations and therefore gains high esteem, then these Articles which most intellectuals consider as a disgrace to Turkey, will have to be eliminated. Such a step would also be in line with the Articles 15 and 90 of the Constitution of 1982. In the last paragraph of the Articles 90 of the Constitution it states: "the legally arrived at international agreements have the power of laws."



The criminalisation of democrats and communists: A Thousand Years of Imprisonment

When Dr. Nihat Sargin and Haydar Kutlu returned to Turkey in order to plan the legal foundation of the United Communist Party of Turkey, the well-known scholar of law Server Tanilli, sent a letter to them. Tanilli, who himself was shot and badly wounded by right-wing terrorists during the wave of terror before 1980, wrote in his letter:

"I have to say that I agree with your decision to return to Turkey. Your decision has a veritable historical message ... The treatment that you will receive will give us an opportunity to show the civilised world again what kind of an anachronistic government is ruling in Turkey. This in itself will be a great service to democracy".

Professor Tanilli was taken to court on the basis of the Articles 141/6, 142/1-6 because of his lecture entitled *The History of Civilization* which he gave at the University of Istanbul. In the indictment written on the 3rd November 1975 the public prosecutor demanded a prison sentence for the scientist, because he had characterised the famous poet Pablo Neruda as "a courageous person who had stuck by his principles".

This trial led to great public protests: 774 well known intellectuals, scientists, and leading personalities of the democratic organisations stated in a declaration which was published in the newspaper *Cumhuriyet* on March 21st 1976, "that they considered it their duty for the defence of democracy, the freedom to thought and the scientific freedoms, to underwrite Tanilli's work as their own". Later the trial was moved to a regular court and finally ended in an acquittal.

Another example is the case of the social scientist Mumtaz Soysal who was taken to court after the military takeover on 12th March 1971 because of his textbook *Introduction to the Constitution* on the basis of Article 142. Professor Soysal spent several months in prison. After the end of the military rule, the case was closed.

For many years now interpreters must bear in mind that they might be taken to court for communist propaganda. The courts punish the translation of a single book with prison sentences of up to 7.5 years. For instance the well-known translator Muzaffer Erdost received in 1974 alone a prison sentence of more than 37 years. Today there are editors who receive prison sentences of 100 to 200 years. The General Secretary of the Association of Contemporary Journalists, Ahmet Abakay, announced in December 1987 that in the prison of Canakkale alone 12 journalists have been locked up since 1980 because of Articles 141 and 142 and that the prize for 3 to 5 lines of writing begins with 5 years of prison.



After the 1980 coup, 404 trials were begun against editors, journalists and writers (altogether more than 50 people) of 4 daily newspapers and 20 magazines. Five more people were sentenced because they had published books. The prison sentences that have so far been dealt out to 32 persons amount altogether to 2,500 years. Veli Yilmaz, the editor of the magazine *Halkin Kurtulusu* received about a third of it, that is 750 years. Osman Tas received 600 years, 155 went to Mustafa Yildirimturk, both of them editors of the same magazine. It should be stressed again that these sentences were meted out on the basis of the Article 142 and that in all cases the only "crime" was the publication of newspaper articles.

After the take over of power by the military on 20th September 1980 the Articles 141 and 142 were used extensively against such parties as the Workers' Party of Turkey, the Communist Party of Turkey, the Socialist Workers' Party of Turkey and the Workers' and Peasants' Party of Turkey. Neither their programmes and statutes nor their practical activities could be accused of threatening the use of force. The leaders and members of all these parties who could not be accused of a single case of terrorism, were sentenced to up to 18 years imprisonment because of the dissemination of a different ideology and the organisation for it.

However, the use of these Articles is not limited to political parties. They are also used against all those whose opinions have not been planned by the state. The trials against the Turkish Peace Association and against the Progressive Trade Union Confederation (DISK) are known examples of this.

Ex-ambassador Mahmut Dikerdem, President of the Turkish Peace Association and Mrs. Reha Isvan (member of the executive) were each sentenced to 5 years in prison on the basis of Article 141 of the Turkish Penal Code (this sentence is not yet legal, however, in spite of that both of them, together with many leading personalities of the peace movement, had to spend 3.5 years in prison). The arguments of the public prosecutor in the military court were as follows: The accused are campaigning for peace. They are for disarmament. Communists also work for peace and demand disarmament. There the accused serve communism.

The logic of the Articles 141 and 142 would seem to emand that the expert on disarmament politics for the SPD in West-Germany, Von Bulow, should be sentenced to 12 years of prison, since he recently spoke out for the removal of all nuclear weapons from Europe. Capital punishment should be demanded for the ICFTU General Secretary, Vardelven, who recently travelled at the head of a delegation to the USA to ask the Senate to ratify the INF Treaty. Capital punishment was demanded for the DISK leadership because they worked for disarmament "also abroad".

On first sight the sentences of the Turkish courts named above may seem like running amuck. The roots of this excess must be sought in the Articles 141 and 142. When political convictions become branded as crimes, justice becomes a mere

tool in the hands of those in power. Their whims will decide which beliefs should be persecuted. Suitable interpretations can be found to brand any standpoint of opposition a crime.

These are the consequences of the prohibitions against the communist movement. In such a situation even the exercise of a basic human right such as the expression of an opinion, turns into a test of courage. A state, in which the mere confession of one's own point of view has become a test of courage hardly deserves the name "democracy".

Political Life in a Straight Jacket

The authorities in Turkey often talk about "important changes" since 12th September 1980, referring to certain developments. The outward appearance, which indeed is similar to pluralistic parliamentarism, should not delude anybody.

It is usual to look upon political parties as an integral part of parliamentary democracy. Let us begin with some remarks about this situation. In addition to the proscriptions in the Constitution, which refer to political parties, there are the regulations of the Law on Political Parties, which are a real straight jacket.

For example, Articles 5 and 78 are based upon Articles 141 and 142 of the Turkish Penal Code. With Article 14 of the Law on Political Parties, party congresses are forbidden to take concrete decisions on questions affecting society. The Article 91 prohibits parties from founding women's and youth sections or educational and voluntary associations. Article 92 prohibits links between parties and any mass organisations. Especially remarkable is Article 97 which prohibits parties from criticising the military coup of 12th September 1980 and the decisions and practices of the "National Security Council".

Also, the law prohibits the foundation of party organisations in villages. But more than half the population lives in villages.

This straight jacket, which applies to all parties, is especially strict towards Communists. Article 96 prohibits the founding of parties which call themselves communist.

The Constitution And Basic Rights

On 16th November 1987 when the General Secretaries of the Workers' Party and of the Communist Party of Turkey, Dr. Nihat Sargin and Haydar Kutlu returned to Turkey, State President Evren said in Mugla: "Turkey is not suitable for the foundation of the Communist Party. It is not possible to found a Communist Party, a fascist party or a religiously based party because there are the Articles 141, 142

and 163 of the Turkish Penal Code. To abolish these Articles we would have to change the Constitution. There is Article 14 in the Constitution. As long as this Article is in force, we cannot do anything. Take notice of that".

The Constitution which is in force at the moment in Turkey, was drawn up according to the orders of the five generals who led the coup d'etat on 12th September 1980. The Constitution was "accepted by plebiscite", on 7th November 1982, when voting "No" was prohibited under threat of penalty. Article 14 of this Constitution, to which General Evren refers, says: "Of the Civil Rights and Freedom of this Constitution none may be misused in order to destroy the indivisible unity of state with its territory and people, to endanger the existence of the Turkish State and the Republic, to abolish Civil Rights and Freedom, to achieve the control of the state by one person or a group or the rule of a social class over other social classes or to create differences in language, race, religion or belief or to found by any other means a state which is based on these ideas and views."

This general restriction of civil rights leads in fact to their abolition. First we have to note that the legitimate restriction, which is contained in international documents on Human Rights (Civil Rights cannot be misused for activities to abolish these rights), is supplemented in the Turkish Constitution by several additions. Extremely flexible and unclear terms are used, which are open to a variety of interpretations. For example, what does "to destroy unity of state with its territory and people" mean? What does "to create differences in language, race, religion or belief" or "to promote the rule of a social class over other social classes" mean? One has to note, that because of this phrase Articles 141 and 142 of the Penal Code come into the Constitution along with the juridical idea which marks opinions and ideas as crimes.

This Article is supplemented by Article 87, by which the parliament is prohibited from declaring an amnesty for those who have been sentenced because of Article 141 and 142.

Is it the task of the Constitution to restrict the spread of ideas and opinions? In the Constitutions of the European countries there are no comparable regulations. If a Constitution prohibits from the start certain ideas and opinions one cannot talk of a democracy any more. Thinking of the situation in Turkey, one cannot help remembering Mussolini, who declared in a speech on 24th March 1924 "Everybody has to think and to act in the framework of the state, as a subject of state authority and rule, according to the will of the state."

What is the meaning of a constitutional guarantee of freedom of thought and opinion and the right to form associations, trade unions and parties for their propagation; if this only applies to opinions which have been approved by the authorities?



Freedom of thought essentially means that ideas and opinions, which are not stated in the Constitution, are allowed as well. If only those ideas and opinions which have been taken into account by the Constitution are allowed to be expressed, one does not need regulations on freedom of thought and opinion.

In Turkey the opinions which are persecuted and penalised mainly on the basis of Articles 141 and 142 are those disliked by the official authorities, or which are contrary to their interests, using the argument, that they are supposed to contradict the principle of the "indivisibility of unity of state with its territory and people".

What do the comparable regulations in Western countries look like? Let us take Italy as an example.

The first Article of the Italian Constitution declares: "Italy is a Democratic Republic, which is based on the principle of work." If it was prohibited in Italy to hold views, which contradicted the principle of the Constitution, economic liberalism would have to be prohibited as "anti-social". Along the same lines, in the Federal Republic of Germany anybody who speaks for a central form of state instead of the Federal form which is provided in the Constitution, would have to be prosecuted. In centrally organised France the opposite would be the case. Everybody would be thrown into jail who spoke for a federal state.

The very far reaching restrictions in Article 14 of the present Turkish Constitution are in contradiction with Articles 14 and 17 of the "European Human Rights Convention".

Therefore, for the Constitution of 1982 the following is characteristic. This document has not been devised to regulate civil rights and freedoms, but to restrict them beyond recognition.

Summarising, one notes that the Constitution of 1982 in itself plays a destabilising role. It prevents the solution of many problems because of restrictions, which under normal political developments could be solved by compromise, political decisions or changes of the law. A "guided democracy", a "second-class democracy" has been established and declared immutable.

Government spokesmen say again and again that the above regulations are not allowed to be changed and cannot be changed. It has been shown, however, in spite of these statements, even the Constitution of 1982 can be changed. For example, on 17th May 1987, the Provisional Article 4 was changed (Prohibition of political activity of leading members of political parties before the military coup).

Also the majority, which is necessary to change the Constitution in parliament decreased from two thirds to three fifths; the minimum age for the active right to vote was lowered from 21 to 19; and the number of parliamentary seats were increased from 400 to 450.

Because of the change of several Articles of the Constitution of 1982, there is no reason why Article 14 and 87 and the other regulations, which penalise the Communist movement, cannot be changed.

A Second-Class Democracy

On what grounds are political bans in the spirit of Mussolini still maintained in Turkey today? What do the official representatives of the country say, in particular Prime Minister Turgut Ozal and President Kenan Evren, in defence of such an anachronism?

Often they are at pains to find arguments. "The geo-political situation of Turkey" is given as a reason for the need to ban communism. What they mean is that Turkey has common borders with socialist countries. But Turkey is not the only country which has socialist neighbours and the political system of which is different. If being a neighbour of a socialist country were to be a valid reason for banning the communist party, then the communist parties in Norway, Finland, Sweden, Denmark, West-Berlin, Federal Republic of Germany, Austria, Italy and Greece should have been banned as well. But there is not a single example of such a ban in democratically-ruled countries.

The advocates of such bans often refer to the low level of development in Turkey. When the Republic of Turkey was founded there was a one-party system. But the economic and social development made it necessary in 1946 to replace it with a multi-party system. However, that change was only half-hearted from the beginning. The political Left still remained banned. But today retention of this ban, refusal to give the working people the right to express their free opinions and engage in free political activity contradicts with the development in our country.

Some supporters of the anti-communist policy of banning the organisations refer to the "insufficient maturity" of our people for such a freedom. But how can people develop a political culture which allows free discussion of different opinions and points of view if the expression of opinions and the organisation for a peaceful propagation of ideas is suppressed by force? How can a civilized discussion of contradictory opinions and a free competition of ideas develop in the society as long as the bans in Articles 141 and 142 of the Turkish Penal Code and in Articles 14 and 87 of the Constitution are upheld? How can a culture of competition of ideas grow in such conditions?

There are also voices which are heard saying: "If we permit the founding of a communist party, we also have to agree to a fascist party." Yet today Alparslan Turkes, known as the leader of a racist, neo-fascist movement, is the chairman of the legal "Party of National Work". That man, who had ordered the murder of the trade union leader Kemal Turkler, said in a party statement about the return of Kutlu and Sargin: "There is no place for communists in Turkey". (*Hurriyet*, 20.3.1987)

"If a communist party is founded, then we also have to legalize an orthodox Islamic party which advocates Sheria (Islamic Fundamental Law)!" This is another demagogic argument used by the supporters of the bans. Ali Bulac, political columnist of the newspaper *Zaman*, which is published by an Islamic group, wrote the following comment: "The thesis that the legalisation of the communist party will necessarily lead to a strengthening of the Sheria movement is upheld by the Right. Islamic circles would not be irritated by the scrapping of the Articles 141 and 142 and the Article 163." (*Yeni Gundem*, 15-21/11/1987)

The developments which Evren refers to as evidence for the strengthening of the fundamentalist Sheria movement have in fact increased after the military coup of 12th September 1980, e.g. after the abolition of democratic freedoms. Strangely enough, Article 163 of the Turkish Penal Code which prohibits "the support of the Sheria" is not being evoked against those developments, but against those sections of the Islamic movement which attempt a modern interpretation of Islam and who advocate political freedom and world peace. In this connection, we should also not forget the following: in a democratic country it must be possible to hold every kind of opinion and point of view as long as this is not translated into violence. If the advocates of the ban on communism really reject the Sheria, they must learn to politically confront that movement within a democratic framework.

If one does not accept that, it would logically follow that one would also have to advocate the prohibition of Christian parties pointing to the inherent danger of restoration of the Inquisition.

Those who want to frighten the Turkish and European public with the "example of Iran" forget an important fact: could there have been a "example of Iran" if the Shah-despotism had not refused to recognise the basic rights and freedoms for decades?

Therefore, the real motives of the advocates of bans should be sought somewhere else. In a short comment which was published without any signature on 19th November 1987 in the newspaper *Hurriyet* it is said: "Why did President Evren deem it necessary to make that extremely harsh statement precisely on the day the two leaders [Kutlu and Sargin -ed.] were expected to arrive in Turkey? Did he possibly express certain fears which were relayed to him by the military?"

In the same edition of *Hurriyet* columnist Ahmet Altan writes the following: "All the citizens of Turkey are always afraid of something. We always fear the ruin of the country.. and some try to ban the danger and in the course of it make quite a bit of money. We have been afraid for long enough. We are tired of being afraid."

Melih Cevdet Anday, a prominent writer and poet, explains in his essay titled "About the United Communist Party" what the anti-communist bans have been used for over the years:



"The visible and invisible rulers of Turkey do not care if a legally constituted communist party exists or not. They have never been concerned about it. What is important for them and what they always use is the word 'Communism'. **If a legal communist party is founded, those visible and invisible rulers will not any longer be in a position to label any idea they dislike and any action they reject as 'communist' and in this way to intimidate the people.** They want the communists to remain in the underground. For if there is a legal communist party, if the word 'Communist' is legalized, then the bogeymen will lose their effect. If you have read the statements of Mr. Kutlu on behalf of the United Communist Party of Turkey, then you will have realized that the UCPT stands for democracy (if you mistrust those words, you will have to equally mistrust the other parties). It stands for the principle of coming to power through elections and going into opposition when the election results require. What will our visible and invisible rulers do, with what secret dangers will they intimidate the people when the necessary changes are made in the penal code and a legal communist party is founded? If you look at the matter from that angle, it will become clear why in countries where the communist party is illegal, freedom of thought cannot gain a foothold." (*Cumhuriyet*, 6/11/1987, emphasis is ours -ed.)

That is why the foreign affairs columnist of the newspaper *Cumhuriyet*, Ergun Balci wrote on 19th November 1987: "Today one cannot talk about a full democracy if the communist party is denied a place in the political spectrum." The same view has also been expressed by the well-known socialist and former Member of Parliament, Mehmet Ali Aybar when he gave a statement to the same newspaper: "There exists no democracy in a country where the communist party is banned."

In the Draft Programme of the United Communist Party of Turkey (UCPT) it says: "Establishment of a democratic regime, consolidation of a democratic development, its protection against interruption by military coups is the main question at the present stage." This assessment is also shared by non-Marxist forces in Turkey today as, for example, by the former Prime Minister Suleyman Demirel, who was himself twice toppled by military coups.

How can the interruption of the democratic regime, as it happened in Turkey recently but nowhere else in Europe, be prevented? How can a democratic stability be secured? Hasan Cemal, a columnist in the newspaper *Cumhuriyet*, answers this question in his article of 22nd November 1987 as follows:

"The safety of stability must be achieved through democracy. The forces aiming de-stabilization see their chance not in democracy but in political bans which degrade into a second-class democracy."

The United Communist Party of Turkey (UCPT) states on this question that transition to a genuine multi-party system and recognition of the elected parliament



as the supreme organ of power is the only way to prevent military coups. It should be pointed out that legalization of the communist movement would be an invaluable contribution to the ending of the fatal custom of coups.

The anti-communist bans have their roots in the totalitarian conception of the state. The prohibition of certain political views and ideas implies the negation of pluralism and consequently of democratic regime as well. The phsyco-political climate which is thus created facilitates the actions of putschists against elected governments. There is a close connection between the anti-communist bans and the fact that there has been no democratic stability in Turkey until today.

That is why the legalization of the communist movement would mean, on the one hand, a decisive step towards transition to a pluralist democracy, and on the other, a safeguard against its interruption by military coups.

The UCPT Is Persecuted Because It Stands For Democracy!

That is the background to the trial against the two founders of the United Communist Party of Turkey (UCPT). As the lawyer Mehmet Ciplak stated in the January 1988 issue of the magazine *Gun*, this trial is interesting not only for political but also for legal reasons. How, for example, are they going to prove the "illegal activities" of the two General Secretaries? Sargin and Kutlu returned to Turkey voluntarily and with the declared aim of forming a legal party and participate in elections? Would people who want to work illegally proceed in that way?

It is stated in the Draft Programme of the United Communist Party of Turkey (UCPT) that it will oppose the policy of political suppression and patronizing, any monopoly on thought and the policy of force, and that it will campaign for the creation of an atmosphere of freedom. Can people be condemned for attempting to form a party which states the following in its Draft Programme?:

"Success in the struggle for freedom and democracy calls for a new political culture which condemns terrorism contemptible of human beings, the state terrorism and any use of terrorism as a political means."

Which Articles of the penal code will one have to dig up in order to condemn the following theses of the United Communist Party of Turkey?:

"The UCPT demands no priledges vis-a-vis the other democratic and left parties, it does not attempt to gain any privileges. The Communist Party makes its own contribution to the struggle for freedom, national independence, democracy and social progress, without any claim for any kind of priledges, but on the basis of its specific qualities."

Today it is forty years since the General Assembly of the United Nations adopted the Universal Declaration of Human Rights. In its Preamble it is stated that:

"...the recognition of dignity inherent in all members of human family and their equal and inalienable rights are the basis of freedom, justice and peace in the world."

and that:

"...member states have committed themselves, in collaboration with the United Nations, to ensuring that the general recognition and realization of human rights and basic rights is fulfilled..."

The conviction of Kutlu and Sargin and prevention of their initiative to legally found the United Communist Party of Turkey will only prove the crude violation of human rights by Ozal Government. And all this happens in a country which is a signatory to the U.N. Universal Declaration of Human Rights, the European Convention on Human Rights and the Helsinki Final Act of the Conference on Security and Co-operation in Europe, which is a member of the Council of Europe and NATO and which has applied for full membership of the European Community. The citizens of the European countries in particular ought not ignore this contradiction.

Can contempt of human rights be tolerated? The case of democracy and freedom concerns everyone!

The credibility of these ideals are at stake. Everyone has to ask oneself the question posed in the call made by Kutlu in front of Ankara State Security Court: "Democracy or demagogy?"



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